

### REMARKS

Prior to the present response, claims 1, 2, 4-7, and 10 were pending. By way of the present response, claim 1 is amended, and new claims 11 and 12 are added. Accordingly, claims 1, 2, 4-7, and 10-12 currently are pending. It is respectfully submitted that the present amendments introduce no new matter. Reconsideration and allowance of the present application are respectfully requested in view of the above amendments and the following remarks.

In the Office Action, claims 1, 2, 4-7, and 10 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Nichols (U.S. Patent No. 3,088,466) in view of Jones (U.S. Patent No. 4,278,081), and in further view of Toy (U.S. Patent No. 3,511,243). This rejection is respectfully traversed, for the following reasons:

With respect to independent claim 1, the Office asserts that claimed features relating to use in a trachea claim 1 do not distinguish over the prior art trachea devices, such as the tracheal device of Nichols, because there is no resultant structural difference between them. Applicant respectfully disagrees because claim 1 recites that “the tubular member is formed in a curved shape in advance to conform to the shape of the pharynx.” It is respectfully submitted that this feature in combination with the other features of claim 1 does recite a structural difference in shape between the claimed device and the tracheal device of Nichols because the location of the pharynx is past the oral cavity and a trachea is located just below the surface of the neck. For instance, Nichols describes, at column 3, lines 54-58, that the tubes 1 and 3 are “curved longitudinally to conform to the shape of the upper end of the trachea.” Hence, there are features set forth in independent claim 1 defining a physical distinction from a tracheal device such as described in the Nichols patent. Further, Applicant submits that neither Jones nor Toy remedy the deficiencies of Nichols pointed out above.

With respect to independent claim 2, Applicant respectfully submits that the cited Nichols patent does not teach or suggest the claimed functional features of the first and second guiding members inserted from the oral cavity into the pharynx prior to an insertion of the tubular member, and the first and second guiding members guiding, when inserted into the pharynx, the tubular member and the reinforcement member from the oral cavity to the pharynx. First, it does not appear possible to insert Nichols’ curved inner tube 3 into the oral cavity and pharynx prior to insertion of the outer tube 1 because the diameter of the curved inner tube 3 is smaller than that of the outer tube 1, and thus insertion of the outer tube 1

would be prevented by the inner tube 3. Second, even if one were to consider combining the Toy patent teachings with Nichols, the multiple expanding elements described by Toy, i.e., the flexible leader 2, adapter element 14, and guide conduit 10 would surround the entire two-tube tracheal device of Nichols, and there would have been no suggestion of providing alignment marks or engagement sections, as claimed, between the elements of Toy and the outer tube 1 of Nichols.

Additionally, to further clarify structural differences between the invention recited in claim 1 and the tracheal tubes of the applied references, claim 1 is amended to recite that the first guiding member is configured to be inserted from an oral cavity into a pharynx prior insertion to the tubular member into the pharynx, to guide the tubular member and the reinforcement member during insertion thereof from the oral cavity and into the pharynx, and to be removed from the pharynx and oral cavity while the tubular member remains inserted in the pharynx. In contrast, it does not appear possible to insert the curved inner tube 3 into a pharynx, insert the outer tube 1 into the pharynx using the curved inner tube 3 as a guide, and remove the curved inner tube 3 while the outer tube 1 remains in the pharynx for the same reasons pointed out above with respect to claim 2.

For at least the above reasons, independent claims 1 and 2 are believed allowable over the Nichols, Jones, and Toy patents. Claims 4-7 and 10, and new claims 10 and 11 are believed allowable at least because they each depend from allowable independent claim 1, and further for the additional recited features set forth in these dependent claims.

Based on the foregoing, this application is believed to be in condition for allowance and prompt notification of the same is respectfully requested.

If any issues remain that may be resolved by a telephone, email or facsimile communication with the Applicants' representative, the Examiner is invited to contact the undersigned at the numbers or email address provided below.

Further, while no fees are believed to be due, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-4525.

Respectfully submitted,

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